

NTSB Order No. EA-5236

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 23rd day of June, 2006

MARION C. BLAKEY,
Administrator,
Federal Aviation Administration,

Complainant,

v.

LOREN WAYNE KULA,

Respondent.

Docket SE-17577

Respondent appeals the orders of Chief Administrative Law Judge William F. Fowler, Jr., issued on November 17, 2005, and November 29, 2005.¹ The law judge dismissed as untimely respondent's appeal of the Administrator's Order of Suspension. We deny the appeal.

The law judge's order recites the facts in significant detail, and, therefore, for our purposes it is only necessary to

¹ Copies of the law judge's orders are attached.

reiterate that respondent failed to file a notice of appeal within 20 days after the Administrator's Order of Suspension was served.² Respondent's deadline for filing his appeal was October 11, 2005; he did not file his appeal, through counsel, until October 26, 2005. On the Administrator's motion, to which respondent, through counsel, filed a reply, the law judge dismissed respondent's appeal as untimely.

On appeal, respondent reiterates much of the argument he raised before the law judge. Principally, respondent argues that he was dealing with his Congresswoman on the matter, and, therefore, he had good cause for the delay in filing his appeal. Our opinion in Administrator v. Beissel summarizes the law and our policy regarding late-filed appeals:

In the context of late-filed notices of appeal and appeal briefs, the Board consistently follows the good cause policy established on remand from Hooper v. NTSB and FAA, 841 F.2d 1150 (D.C. Cir. 1988). That is, "[the Board] intends to adhere uniformly to a policy requiring the dismissal, absent a showing of good cause, of all appeals in which timely notices of appeal, timely appeal briefs or timely extension requests to submit those documents have not been filed." Administrator v. Hooper, 6 NTSB 559, 560 (1988). The Board publishes decisions addressing late-filed notices of appeal and appeal briefs, even those issued under delegated authority by the General Counsel,

² It appears that more than 2 years elapsed between an informal conference held between respondent and the FAA, and the Administrator's issuance of her order of suspension. In his appeal, respondent attempts to argue this issue, but it is not relevant to our determination of whether respondent's appeal of the order was timely. In light of the fact that respondent's appeal was undisputedly late, the only germane legal issue is whether he had good cause for his delay in filing the appeal.

and respondent cites us no case, and we are aware of none, where we have not followed this policy. Nor does respondent cite any case, nor are we aware of any since our decision in Hooper, in which we applied that standard in a manner that is inconsistent with the result here.

NTSB Order No. EA-5153 at 4 (2005) (internal reference omitted).

Respondent does not claim he could not timely file an appeal, but, rather, that he was waiting to hear from a "member of [his Congresswoman's] support staff who was represented to be an expert in FAA matters" because he "was asked to give the Congresswoman's office time to ... get this resolved." Resp. Brief at 8-9. Aside from the fact that these details of respondent's claim are not supported by any affidavits or other documents, even if true, waiting to hear from a congressional office does not constitute good cause for neglect in filing an appeal. Respondent could have timely filed his appeal, and simultaneously pursued whatever political redress he alleges he thought he might be able to avail himself of. We have no hesitancy in holding that respondent's alleged sole reliance upon extrajudicial assistance is not legal justification for his failure to timely file his appeal. Consistent with our case law under Hooper, we find no basis to disturb the law judge's well-reasoned decisions.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 60-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.³

ROSENKER, Acting Chairman, and HERSMAN and HIGGINS, Members of the Board, concurred in the above opinion and order.

³ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(g).